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o. 361] NEW DELHI, SATURDAY, AUGUST 23, 1952

ELECTION COMMISSION, INDIA

NOTIFICATIONS

New Delhi, the 21st August 1952

No. DL-A/52 (59).—It is hereby notified for general information that the disqualifications under clause (c) of section 7 and section 143 of the Representation of the People Act, 1951 (XLIII of 1951), incurred by the persons whose names and addresses are given below, as notified under notification No. DL-A/52 (12), dated the 17th April, 1952, have been removed by the Election Commission in exercise of the powers conferred on it by the said clause and section 144 of the said Act respectively:—

Seth Shadi Lal of 2, Underhill Road, Civil Lines, Delhi.

Shri Kailash Nath Seth of 475, Katra Neel, Delhi.

New Delhi, the 22nd August 1952

No. DL-A/52 (58).—It is hereby notified for general information that the disqualifications under clause (c) of section 7 and section 143 of the Representation of the People Act, 1951 (XLIII of 1951), incurred by the person whose name and address is given below, as notified under notification No. DL-A/52 (11), dated the 17th April, 1952, have been removed by the Election Commission in exercise of the powers conferred on it by the said clause and section 144 of the said Act respectively:—

Shri Balwant Kishan Kapoor of 34, Lodhi Road, New Delhi.

No. PP-CS/52 (3).—It is hereby notified for general information that the disqualifications under clause (c) of section 7 and section 143 of the Representation of the People Act, 1951 (XLIII of 1951), incurred by the persons whose names and addresses are given below, as notified under notification No. PP-CS/52 (2), dated the 13th June, 1952, have been removed by the Election Commission in exercise of the powers conferred on it by the said clause and section 144 of the said Act respectively:—

Shri Chander Bhan, Advocate, House No. 415, Jind.

Mohd. Abdul Bari Khan of Patiala.

No. RN-P/52 (21).—It is hereby notified for general information that the disqualifications under clause (c) of section 7 and section 143 of the Representation of the People Act, 1951 (XLIII of 1951), incurred by the person whose name and address is given below, as notified under notification No. RN-P/52 (15), dated the 19th July, 1952, have been removed by the Election Commission in exercise of the powers conferred on it by the said clause and section 144 of the said Act respectively:—

Shri Dwarka Dass Purohit, S/o Shri Shankerlal, Court Road, Jodhpur, Rajasthan.

No. MD-P/52 (104).—It is hereby notified for general information that the disqualifications under clause (c) of section 7 and section 143 of the Representation of the People Act, 1951 (XLIII of 1951), incurred by the persons whose names and addresses are given below as notified under notification No. MD-P/52 (18), dated the 22nd April, 1952, have been removed by the Election Commission in exercise of the powers conferred on it by the said clause and section 144 of the said Act respectively:—

Shri R. Srinivasa Sarma of Kallkoti, Mavoor, District Tanjore.

Shri V. Venkataraman of Kallkoti, Mavoor, District Tanjore.

No. MD-P/52 (105).—It is hereby notified for general information that the disqualifications under clause (c) of section 7 and section 143 of the Representation of the People Act, 1951 (XLIII of 1951), incurred by the persons whose names and addresses are given below as notified under Notification No. MD-P/52 (19), dated the 22nd April, 1952, have been removed by the Election Commission in exercise of the powers conferred on it by the said clause and section 144 of the said Act respectively:—

Shri S. Rm. Ramanathan Chettiar of Ramnad House, Tanjore.

Shri S. A. Rahim of 4-45 Street, 48 Mylapore North, Madras.

P. N. SHINGHAL, *Secy.*

New Delhi the 23rd August 1952

No. 19/86/52-Elec.III.—In pursuance of the provisions of Sub-section (1) of Section 90 of the Representation of the People Act, 1951 (XLIII of 1951), the following election petition presented under Section 81 thereof is published for information.

B. PRASAD,

Chairman, Patna Election Tribunals.

Dated, Camp Ranchi, the 18th August, 1952.

ELECTION PETITION

Before:

THE ELECTION COMMISSION INDIA, NEW DELHI.

In the matter of

An election petition under sections 80, 81 and 100 of the Representation of the Peoples Act (Act XLIII of 1951)

AND

In the matter of election to the Muzaffarpur North-West Constituency for the House of the People

AND

In the matter of

Article 324 of the Constitution

AND

In the matter of

Sections 33 and 26 of Act XLIII of 1951 (wrongful rejection of nomination papers of Mr. Krishna Chandra, son of Late Shri Harish Chandra, resident of Kall Kothi, a quarter in Ward No. 4 in the Town of Muzaffarpur in the State of Bihar.)

AND

In the matter of Shri Baijnath Prasad Varma, son of Late Shri Chandradec Narain Varma, resident of Village Kamrauli, Sub-Division Sitamarhi, District Muzaffarpur PETITIONER.

Versus

1. Chandreshwar Narain Prasad Singh, son of Bishwanath Prasad Singh deceased, village Bhandari, Pergana Mahila, P. S. Belsand, District Muzaffarpur.

2. Ganesh Kumar Narain Singh, son of Fekan Singh, deceased, Village Dhankaul, Pergana Babra, P. S. Sheohar, District Muzaffarpur.

3. Thakur Jugal Kishore Singh, son of Sadhu Saran Singh, Village Dumri-Khurd, Pergana Babia-Champaran, P. S. Majorganj, District Muzaffarpur.

4. Babu Kedar Singh, son of Babu Jallal Singh, deceased, Village Dumri-Kalan, Pergana Babia-Champaran, P. S. Majorganj, District Muzaffarpur.

5. Thakur Nagnarain Singh, son of Babu Ramdeyalu Singh, Village Dumri-Khurd, Pergana Babia-Champaran, P. S. Majorganj, District Muzaffarpur.

6. Shri Krishna Chandra, son of Late Shri Harish Chandra, resident of Kali Kothi, a quarter in Ward No. 4 in the town of Muzaffarpur RESPONDENTS

The humble petition on behalf of the above-named Petitioner.

Most Respectfully Sheweth:—

1. That the petitioner is an elector for the Muzaffarpur North-West Parliamentary Constituency and was duly nominated candidate for the election to the House of the People from Muzaffarpur North-West Constituency.

2. That Mr. Krishna Chandra respondent No. 6 is an elector for the Muzaffarpur East Parliamentary Constituency and possesses the qualifications prescribed by the Constitution and by the Acts of the Parliament for being chosen to fill a seat in the House of the People. His Serial No. in the Electoral Roll of the Muzaffarpur East Parliamentary Constituency is 584 of Town Ward No. 4.

3. That the President by Notification published in the Gazette of India called upon the Parliamentary Constituencies to elect members in accordance with the provisions of the Representation of the Peoples Act and Rules and Orders made thereunder before the 15th of February, 1952, the date appointed on this behalf by the Election Commission and specified in the Notification.

4. That the Election Commission appointed Mr. N. N. Gazdar to be the Returning Officer for the Muzaffarpur North-West Parliamentary Constituency.

5. That Mr. N. N. Gazdar, the Returning Officer for the Muzaffarpur North-West Parliamentary Constituency issued public notice of the intending election to the House of the People from the aforesaid Constituency and specified Sitamarhi to be the place where the nomination papers were to be delivered and appointed 24th November, 1951, to be the last date for filling nominations.

6. That on 24th November, 1951, several nomination papers of the aforesaid Mr. Krishna Chandra, Respondent No. 6 were duly presented within the prescribed time and completed in the prescribed forms.

7. That Mr. Krishna Chandra, Respondent No. 6 at the time of presenting the nomination papers enclosed a receipt showing a deposit of Rs. 500 in favour of the Returning Officer as security deposit and also filed an authenticated copy of the relevant extract from the Electoral Roll of the Muzaffarpur East Constituency in which his name has been entered as an elector.

8. That on the presentation of the nomination papers of the said Mr. Krishna Chandra, Respondent No. 6, the Returning Officer after an examination of the relevant papers (including a certified copy of the entries relating to his name in the electoral roll of the Muzaffarpur East Parliamentary Constituency) satisfied himself that the name, the electoral roll number and age of the said candidate were correctly entered in the nomination paper and he further satisfied himself that the name, the electoral number of the different persons and seconders of the candidate entered in the nomination papers were the same as entered in the electoral roll of the Constituency.

9. That thereafter, the Returning Officer, entered serial number on the said nomination papers and returned the certified copy to Mr. Krishna Chandra, the said candidate.

10. That the Respondents Nos. 1 to 5 had also presented their nomination papers for election to the House of the People from the said Constituency.

11. That at the time of the scrutiny of the nominations the petitioner and Mr. Krishna Chandra, the said candidate were present in person, besides Mr. Shiva Sati Prasad, Advocate was present on behalf of the said candidate Shri Krishna Chandra.

12. That the Returning Officer, asked for the production of the certified copy of the Electoral Roll of the Constituency in which the name of Mr. Krishna Chandra was entered as an Elector.

13. That it was submitted on behalf of Mr. Krishna Chandra that the Returning Officer had already satisfied himself by looking into the certified copy of the entry of Mr. Krishna Chandra's name in the electoral roll and comparing the same with the entry on the nomination paper, and in case the same was required again, a little time be allowed to him to get the same from his Sitamarhi Lodge (which was 2 miles away from the Court) and also submitted that he had already sent his car to fetch the same.

14. That thereafter Thakur Jugal Kishore Singh, Respondent No. 3 also objected insisting that Shri Krishna Chandra's nomination be rejected forthwith.

15. That the Returning Officer did not wait even for a few minutes to hear the submissions that were being made by Mr. Shiva Sati Prasad nor to see the paper sought for the rejected Mr. Krishna Chandra's nomination papers.

16. That it was contended on behalf of Mr. Krishna Chandra that it was not lawful for the Returning Officer to reject the nomination papers and his attention was drawn to the relevant Section of the Representation of the Peoples Act.

17. That the Returning Officer did not hear the submission made on behalf of Mr. Krishan Chandra and having rejected the nominations as stated above left the Court Room at 11-35 A.M.

18. That the brother of Mr. Krishna Chandra, Mr. Dinesh Chandra brought the certified copy of the relevant portion of the Electoral Roll of the Muzaffarpur East Parliamentary Constituency wherein he is recorded an Elector at 11-45 A.M. on the same day and the same was filed before the Assistant Returning Officer, who was sitting in the Court-room and it was after some arguments and discussions that the Assistant Returning Officer accepted the paper and noted thereon the time of accepting the same as 12-02 P.M.

19. That on 2nd December, 1951, Shri Krishna Chandra's application for the review of the above order of the Returning Officer was filed which was rejected.

20. That Mr. Kedar Nath Singh, Respondent No. 4 and Shri G. K. Singh, the Respondent No. 2 withdrew from the election within the time prescribed.

21. That the Returning Officer thereafter prepared a list of the remaining valid nominations.

22. That elections were held at several polling stations in the said Constituency between 4th January, 1952 and 23rd January, 1952 and the result of the said election was declared on 8th February, 1952 and the appropriate authority caused the result to be published on the 15th of February, 1952, in the *Gazette of India*.

23. That the legal rejection of the nomination of Shri Krishna Chandra materially effected the result of the election and your petitioner who was also duly nominated candidate and who contested in the said election suffered as a result thereof and therefore has the right to present the election petition.

24. That a Treasury Chalan showing a deposit of Rs. 1000/- (Rupees One thousand) by way of security deposit made in favour of the Secretary Election Commission is enclosed herewith (Chalan No. 225, dated the 29th March, 1952) as provided by the Act.

25. That the return of the election expenses filed by Respondent No. 1 is wrong and incorrect and many actual expenses have not been returned at all and the provisions and rules of the Representation of the Peoples Act, and the Constitution have not been complied with.

Being aggrieved and dissatisfied with the orders of Shri N. N. Gazdar, dated the 1st and 2nd of December, 1951, whereby he was pleased to reject the nominations of Shri Krishna Chandra for Election to the House of the People from the Muzaffarpur North-West Parliamentary Constituency resulting in the so called return of Mr. Chandreshwar Narain Prasad Singh, the Respondent No. 1 to the House of the People, the petitioner who has the right to present a petition to set aside aforesaid election begs leave to prefer this Election Petition on amongst others the following.

Grounds

I. For that the rejection of the nomination papers by the Returning Officer is arbitrary, unjust and improper.

II. For that the order passed by the Returning Officer is in utter disregard of the fundamental rules of the law contained in the Representation of the Peoples Act.

III. For that the Returning Officer having been satisfied regarding the existence of Mr. Krishna Chandra's name in the Electoral Roll by the production of an

authenticated copy of the relevant extract thereof at the time of filing of the nomination itself, it was a case of piling unreason upon technicality in his having insisted on rejecting the nomination paper of Shri Krishna Chandra at the scrutiny without affording him even a few minutes opportunity to produce the very same extract from the Electoral Roll.

IV. For that the order of the Returning Officer is in violation of the statutory rules contained in the proviso of section 36(5) of Representation of Peoples Act (XLIII of 1951).

V. For that the non-production of the certified copy of the entry in the Electoral Roll at the time of the scrutiny was not material irregularity and in any view of the matter it was incumbent on the Returning Officer to have made an enquiry and allowed time to Shri Krishna Chandra to rebut the objections and for that purpose to have adjourned the case for the period laid down by law to which date other persons interested in the scrutiny could have been directed to come, if they desired to attend the enquiry.

VI. For that the improper rejection of Mr. Krishna Chandra's nomination has materially effected the entire election of the Constituency under reference and the same is therefore void.

VII. For that Mr. Krishna Chandra suffered from no disqualifications and the rejection of his nomination paper was, therefore, quite improper and illegal.

VIII. For that the election of the said Respondent No. 1 is void due to non-compliance of the provisions and rules of the Representation of Peoples Act inasmuch as the return of election expenses submitted by him is wrong and incorrect and full actual expenses have not been returned at all.

It is, therefore, prayed that an Election Tribunal may be appointed which after hearing the parties may declare the aforesaid election to be void and the return of Mr. Chandreshwar Narain Prasad Singh to be illegal and improper and order for an election to the House of the People from the Muzaffarpur North-West Constituency after declaring the nomination of Mr. Krishna Chandra to be valid or pass such other order or orders as to the Tribunal may appear fit and proper.

AND

It is further prayed that the cost of this Election Petition may be paid to the petitioner from the person liable in the opinion of the Tribunal. And for this act of kindness the petitioner, as in duty bound, shall ever pray.

Verification

I, Beijnath Prasad Varma, declare that the contents of the above election petition is true and correct to the best of my knowledge and belief.

Sd. BALJNATH PRASAD VARMA.

The 31st March, 1952.

List, setting forth full particulars of the corrupt and illegal practice.

1. That on the presentation of the nomination papers of the said Mr. Krishna Chandra Respondent No. 6 the Returning Officer after an examination of the relevant papers (including a certified copy of the entries relating to his name in the electoral roll of the Muzaffarpur East Parliamentary Constituency) satisfied himself that the name, the electoral roll number and age of the said candidate were correctly entered in the nomination paper and he further satisfied himself that the name, the electoral number of the different persons and seconders of the candidate entered in the nomination papers were the same as entered in the electoral roll of the Constituency.

2. That thereafter, the Returning Officer, entered serial numbers on the said nomination papers and returned the certified copy to Mr. Krishna Chandra, the said candidate.

3. That at the time of scrutiny of the nominations the petitioner and Mr. Krishna Chandra, the said candidate, were present in person, besides Mr. Shiva Sati Prasad, Advocate was present on behalf of the said candidate Mr. Krishna Chandra.

4. That the Returning Officer, asked for the production of the certified copy of the electoral roll of the constituency in which the name of Mr. Krishna Chandra was entered as an elector.

5. That it was submitted on behalf of Mr. Krishna Chandra that the Returning Officer had already satisfied himself by looking into the certified copy of the entry of Mr. Krishna Chandra's name in the electoral roll and comparing the same with the entry on the nomination paper, and in case the same was required again, a little time be allowed to him to get the same from his Sitamarhi lodge which was 2 miles away from the court and also submitted that he had already sent his car to fetch the same.

6. That the Returning Officer did not wait even for a few minutes to hear the submissions that were being made by Mr. Shiva Sati Prasad nor to see the papers sought for the rejected Mr. Krishna Chandra's nomination papers.

7. That it was contended on behalf of Mr. Krishna Chandra that it was not lawful for the Returning Officer to reject the nomination papers and his attention was drawn to the relevant section of the Representation of the People Act.

8. That the Returning Officer did not hear the submission made on behalf of Mr. Krishna Chandra and having rejected the nomination as stated above left the court room at 11-35 A.M.

9. That the brother of Mr. Krishna Chandra, Mr. Dinesh Chandra brought the certified copy of the relevant portion of the electoral roll of the Muzaffarpur East Parliamentary Constituency wherein he is recorded an elector at 11-45 A.M. on the same day and the same was filed before the Assistant Returning Officer, who was sitting in the Court room and it was after some arguments and discussion that the Assistant Returning Officer accepted the paper and noted thereon the time of accepting the same as 12-02 P.M.

10. That on 2nd December, 1951, Shri Krishna Chandra's application for the review of the above order of the Returning Officer was filed which was rejected.

11. That the illegal rejection of the nomination of Shri Krishna Chandra materially effected the result of the election and your petitioner who was also a duly nominated candidate and who contested in the said election suffered as a result thereof and therefore has the right to present the election petition.

12. That the return of Election Expenses filed by Respondent No. 1 is wrong and incorrect and many actual expenses have not been returned at all and the provisions and rules of the Representation of the Peoples Act and the Constitution have not been complied with.

13. That the order passed by the Returning Officer is in utter disregard of the fundamental rules of the law contained in the Representation of the Peoples Act.

14. That the Returning Officer having been satisfied regarding the existence of Mr. Krishna Chandra's name in the electoral roll by the production of an authenticated copy of the relevant extract thereof at the time of filing of the nomination itself it was a case of piling unreason upon technicality in his having insisted on rejecting the nomination paper of Shri Krishna Chandra at the scrutiny without affording him even a few minutes opportunity to produce the very same extract from the electoral roll.

15. That the order of the Returning Officer is in violation of the statutory rules contained in the proviso of section 36 (5) of Representation of Peoples Act (XLIII of 1951).

Verification

I, Baijnath Prasad Varma, declare that the contents of the above election petition is true and correct to the best of my knowledge and belief.

Sd. BAIJNATH PRASAD VARMA.

No. 19/13-23/52-Elec.III.—WHEREAS the election of Shri Indubhai Bhailalbhai Amin of Alembic Works, Baroda, Bombay State, as a member of the House of the People, from the Baroda-West constituency of that House, has been called in question by two election petitions duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Pranlal Thakorlal Munshi of Pratap Gunj, Baroda and Shrimati Hansaben Jivraj Mehta of University Road, Baroda, respectively;

AND WHEREAS, the Tribunal appointed by the Election Commission, in pursuance of the provisions of sections 86 and 87 of the said Act for the trial of the said petitions, has in pursuance of the provisions contained in section 103 of the said Act, sent a copy each of its orders on each of the said Election Petitions;

NOW THEREFORE, in pursuance of the provisions of section 106 of the said Act the Election Commission hereby publishes the said Orders of the Tribunal.

ELECTION PETITION No. 13 of 1952.

CORAM

Shri M. S. Noronha, B.A., LL.B., J.P.—Chairman.

Shri N. M. Miabhoy, B.A., LL.B. } Members
Shri A. A. Adarkar, B.A., LL.B. } of the Election Tribunal.

In the matter of the Representation of the People Act, 1951

And

In the matter of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951

AND

NOW THEREFORE in pursuance of the provisions of section 106 of the said Act the Election Commission hereby publishes the said Orders of the Tribunal.

Pranlal Thakorlal Munshi, aged 67 years, Hindu, residing at Prapat Gunj, Baroda—Petitioner.

Versus

- | | |
|--|----------------|
| 1. Indubhai Bhailalbhai Amin, aged 37 years, Hindu, residing at Alembic Works, Baroda. | } Respondents. |
| 2. Hari Ramchandra Gokhale, aged 36 years, Hindu, residing at Anandpura, Baroda. | |
| 3. Bhailal Jesangbhai Patel, aged 44 years, Hindu, residing at Dandia Bazar, Baroda. | |
| 4. Chandulal Khushaldas Patel, aged 28 years, Hindu, residing at Village Sejakuwa, of Padra Taluka of Baroda District. | |
| 5. Nanubhai Vrajilal Patel, aged 48 years, Hindu, residing at Kothi Pole, Baroda. | |
| 6. Hansaben Jivraj Mehta, aged 54 years, Hindu, residing at University Road, Baroda | |

JUDGMENT

On 24th November, 1951 the Petitioner Shri Pranlal Thakorlal Munshi, as a Congress candidate for the seat in the House of the People from Baroda West Constituency, delivered two nomination papers to the Returning Officer Shri L. R. Dalal. Admittedly, in both these nomination papers, the Petitioner had omitted to fill in his age in Item No. 4 of the nomination paper. The nomination papers came up for scrutiny on the 27th of November 1951 before the Returning Officer who rejected the same, holding that the omission to mention the age in the appropriate column was a vital defect in the nomination papers and not merely technical. In the election that was subsequently held the Respondent No. 1 was declared duly elected to the seat in the House of the People from the Baroda West Constituency and the fact was announced in the Gazette of India on the 25th of January 1952. The Petitioner has under Section 81 of the Representation of the People Act, 1951 presented this petition stating that his nomination papers were improperly rejected by the Returning Officer and that such rejection has materially affected the election and praying that the election to the House of the People from the Baroda West Constituency be declared wholly void.

2. In this Petition the Petitioner has stated that his age is 67 years, though in the electoral roll it had been shown as 64 years. The Petitioner has alleged that before rejecting the nomination papers the Returning Officer did not give him an opportunity to be heard in the matter; that nobody raised any objection to the Petitioner's nomination and that the Returning Officer rejected the nomination *suo motu* without any inquiry. The Petitioner has further stated that he was a member of the former House of the People; that as there was no objection raised to his nomination the Returning Officer ought to have made a summary inquiry regarding his age before rejecting the nomination papers; and that the omission to mention the age in the nomination papers was at best a technical defect, the more so as his age had been mentioned in the electoral roll as 64 years and the electoral roll number in question was specifically referred to in the appropriate column in the nomination papers. The Petitioner further averred that the Returning Officer knew him personally and could have had no misapprehension regarding his identity or his eligibility.

3. At the trial of this Petition the Petitioner was represented by Shriyuts S. A. Sudhalkar, C. M. Shroff, C. C. Mehta and B. H. Soman, advocates. Shriyuts G. N. Joshi and J. M. Pavri, advocates, represented Respondent No. 1. Respondents Nos. 2 and 5 remained absent. Respondent No. 3 was represented by Shri M. M. Patel, advocate, while Shriyuts M. K. Jejurkar and C. A. Patel, advocates, appeared for Respondent No. 4 and Shri N. D. Chokshi, advocate, for Respondent No. 6. Shri G. N. Joshi filed a written statement on behalf of Respondent No. 1. Shriyuts M. M. Patel, M. K. Jejurkar and N. D. Chokshi did not desire to file written statements on behalf of Respondents 3, 4 and 6 respectively.

4. In his written statement (Ex. No. 1) Respondent No. 1 has denied that it was through inadvertence or oversight that the Petitioner had forgotten to mention his age in the nomination papers or that the omission to mention the age in the nomination papers was only a technical defect or that the defect was not of substantial character. He stated that under Article 84(b) of the Constitution of India the age limit prescribed for membership of the House of the People is 25 years, while the qualifying age limit for enrolment as an elector to the House of the People was 21 years under Article 326 of the Constitution. In view of this departure in the Indian Constitution from the general rule that a person qualified to be an elector was also qualified to stand as a candidate for election, the Respondent stated that a statutory provision is made in Rule 4 of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951, laying down that a nomination paper shall be completed in the form specified in Schedule II to the said Rules. Further, in Section 33(1) of the Representation of the People Act, 1951 there was a statutory provision that the nomination paper must be 'completed in the prescribed form'. In the circumstances, it was contended, the age of a candidate for membership of the House of the People became a matter of vital importance and significance, and the omission to mention the age therefore is a vital defect. At any rate it could not be regarded as a defect of a non-substantial character. The omission on the part of the Petitioner to mention his age, it was contended, is a failure to comply with a vital requirement of law and as such renders the nomination papers invalid. In the circumstances, it was submitted that the Returning Officer was correct and in order in treating the omission to mention the age in the nomination forms as a vital defect and in rejecting the nomination papers under Section 36(2)(d) of the Representation of the People Act, 1951.

5. At the commencement of the trial Shri Sudhalkar raised several issues. However, at the time of his arguments he confined himself to the main issue in the case, which is whether the defect in the nomination paper arising out of the failure of the Petitioner to mention his age is a technical defect which is not of substantial character.

6. Before coming to the said crucial point in this case the Tribunal may dispose of a short point raised by Shri Sudhalkar, the learned counsel for the Petitioner. He contended that the Returning Officer erred in law in deciding the validity of the nomination paper of the Petitioner without giving him an opportunity to be heard in support of his nomination paper. Shri Sudhalkar conceded that under Section 36, Clause 2 of the Representation of the People Act the Returning Officer had a right to refuse a nomination paper on his own motion on any of the grounds mentioned in Section 36, Clause 2. He contended, however, that it was not competent to the Returning Officer to do so without hearing the Petitioner. It is his argument that the words 'on his own motion' in Section 36(2) imply that before he refuses the nomination paper he should call upon the party concerned to show cause as to why the nomination paper should not be refused. The learned advocate submitted that this failure on the part of the Returning Officer to give an opportunity to the Petitioner to explain his case is against the principles of natural justice and has ended in a failure of justice. Shri Sudhalkar admits that the Petitioner was present at the scrutiny and could have raised his voice and explained his position, but according to him his client's conduct is immaterial and the Returning Officer should have specifically called upon the Petitioner to give his explanation.

7. Shri Joshi the learned counsel for Respondent No. 1 has urged, however, that under the provisions of Section 36 of the Representation of the People Act it was not incumbent upon the Returning Officer to call upon the Petitioner to explain the omission. There was a total omission in this case and not a mere misdescription or discrepancy or inaccuracy in filling the form, and it was not a case where any doubt could arise regarding the particulars to be mentioned in the nomination paper. Therefore, according to him, there was no occasion for holding a summary inquiry.

8. The Tribunal thinks that on the plain meaning of the Section 36(2) it cannot be said that the Returning Officer is bound to make any inquiry in the case of a total omission, because in such a case there is no possibility of any doubt. In fact, the Tribunal is of the opinion that in this case the Returning Officer had no power to hold any inquiry and to give any opportunity to the Petitioner to fill in the gap. The provision regarding inquiry is meant to help the Returning Officer to remove or clear his doubts, if any arise, at the time of the scrutiny about the identity or eligibility of a candidate, owing to any misdescription, inaccuracy, discrepancy or otherwise. Moreover in the present case it cannot be said that the Returning Officer's failure to hear the Petitioner has caused him any prejudice because even if the Returning Officer had instituted any inquiry and learnt that the omission occurred through oversight, he (the Returning Officer) could not have permitted the Petitioner to make good the omission. This disposes of the contention that the Petitioner was not heard by the Returning Officer before he rejected his nomination paper.

9. This brings the Tribunal to the main question in the case, viz., whether the Returning Officer was right in rejecting the nomination papers of the Petitioner on the ground that the Petitioner had omitted to fill in the details as regards his age and whether this omission is a vital defect and not merely a technical one. The determination of this point will necessitate the consideration of the question whether the provisions regarding the filling in of the form are mandatory or directory.

10. At this stage it would be appropriate to advert to the relevant provisions of the Representation of the People Act and the rules framed thereunder regarding the nomination of candidates and the filling of nomination papers. Section 33 of the Representation of the People Act deals with the presentation of a nomination paper and the requirements for a valid nomination. It *inter alia* lays down that each candidate shall either in person or by his proposer or second deliver to the Returning Officer a nomination paper completed in the prescribed form. Section 36 of the Act deals with the scrutiny of nominations and in sub-section 2 provides among other things that the Returning Officer may refuse any nomination on the ground that there has been a failure to comply with any of the provisions of Section 33. The Section further provides in sub-section 4 that "The Returning Officer shall not reject any nomination paper on the ground of any technical defect which is not of a substantial character". As stated above Section 33 requires that in order that a nomination paper may be valid it must be completed in the prescribed form. Rule 4 of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951, lays down that every nomination paper delivered under sub-section (1) of Section 33 shall be completed in the form specified in Schedule II to the said Rules. In other words the nomination paper in order that it may be valid must be delivered completed in the specified form.

11. Shri Joshi's contention was that the provisions of Sections 33 and 36 are mandatory. Therefore, he contended that any breach of the provisions of Section 33 was fatal. The Tribunal is not in agreement with this submission. It is true that the provisions of Section 33 appear to be mandatory. However, in the Tribunal's opinion, in construing Section 33 it is necessary to bear in mind the provision contained in Section 36 especially sub-sections (2) and (4). Sub-section (2) of Section 36 gives a discretion to the Returning Officer to reject or not a nomination paper which commits a breach of the provisions contained in Section 33 of the Act. In the opinion of the Tribunal, if the provisions of Section 33 were mandatory it is extremely improbable that the Legislature would allow this discretion to the Returning Officer. In the Tribunal's opinion if the provisions of Section 33 were intended to be mandatory then the Legislature would have directed in Section 36 that the moment a Returning Officer finds that a nomination paper commits a breach of the provisions contained in Section 33 he shall reject the same. Sub-section (4) of Section 36 also leads us to the same conclusion. This sub-section enjoins a Returning Officer not to reject a nomination paper even though it commits a breach of Section 33, if the defect is a technical one and not of a substantial character. Therefore, the Tribunal has come to the conclusion that the provisions contained in Section 33 are directory and not mandatory and that the provisions contained in Section 36(2) are not mandatory. The Tribunal also does not agree with the view that the provisions contained in Section 36(2) are directory. In the Tribunal's opinion these provisions are discretionary. The language of that sub-section does not leave any doubt that a discretion is given to the Returning Officer to reject or not a nomination paper even if any of the grounds mentioned in clause (a) to (e) are present in a particular case. It is well known that if a statutory provision is mandatory then an exact compliance therewith is necessary and if on

does not comply with that provision exactly then a breach thereof cannot be tolerated. Therefore, the Tribunal has come to the conclusion that in the case of the completion of a nomination paper an exact compliance thereof is not necessary. However, it is also equally well known that when the provisions of a statute are directory in nature, those provisions must, though not exactly, be substantially complied with. In view of the aforesaid conclusions the Tribunal holds that, in order that a nomination paper may be valid, it is necessary that it should substantially comply with the provisions of Section 33 read with rule 4 of the Rules, though not exactly. Therefore, in the opinion of the Tribunal, the main question as already stated before that has to be considered is whether the Petitioner substantially complied with the provisions of Section 33 read with rule 4 or not. The Legislature has directed the same thing to be done in Sub-section (4) of Section 36. In the Tribunal's opinion both the questions are allied and interconnected. In the subsequent part of this judgment the Tribunal has considered the question as to whether the omission by the Petitioner to mention his age in his nomination paper was or was not a technical defect of a substantial character. For the reasons given in that part of the judgment the Tribunal has come to the conclusion that even if it was assumed that the defect was technical it was of a substantial character. For the same reasons the Tribunal has also come to the conclusion that the Petitioner did not substantially comply with the provisions contained in Section 33 of the Act which require that his nomination paper should have been completed in the prescribed form. It must be borne in mind that the Tribunal is not sitting here in appeal from the decision of the Returning Officer and therefore so long as he acts within his powers it cannot be said that he is acting illegally or improperly. Surely, however, if he uses his discretion quite arbitrarily and against natural justice the Tribunal may in appropriate cases intervene. But such is not the case here. If he finds that there is an omission in the nomination paper which does not comply with the requirements of law, it is within his competence to reject the nomination paper. But he will be exceeding his powers if he rejects the nomination paper for a technical defect which is not of a substantial character. In view of the provisions of Section 36(4) he cannot reject a nomination paper where there is a technical defect which is not of a substantial character and therefore what we have to see is whether the omission to mention the age is a technical defect which is not of a substantial character.

12. As stated in the above para. the Returning Officer has a discretion to refuse any nomination if it does not comply with the provisions of Section 33 and it cannot be said that if he exercises his discretion one way or the other he is acting outside his powers. Hence we cannot interfere with his decision. Shri Sudhalkar has contended that in the circumstances of the case failure to mention the age in the nomination paper is not a defect of a substantial character. He submits that items 7 and 8 in the nomination paper provide for the mention of a candidate's constituency and his number on the electoral roll. He therefore contends that these entries from the electoral roll form part of the nomination paper. Since these entries mention the age of the candidate he argues that it must be taken for granted that the nomination paper shows the age of the Petitioner, and the requirement of mentioning the age in the nomination paper is thus satisfied. In this connection Shri Sudhalkar relied upon Halsbury's Laws of England, Vol. 7, 2nd Edition, P. 115, para. 163, and the case of *Ridgway V/s Wharton* (10, English Reports, P. 1287) and submitted that when one document referred to another the two might be read together so as to constitute a complete memorandum. The Tribunal fails to see how these authorities are applicable in the present case. In the first instance there is no document here which makes a specific reference to any other document. The proposition enunciated above may be perfectly good in the case of contracts and some other cases but it is quite out of place here. The Tribunal is therefore unable to accept the aforesaid contention; for if the entry in the electoral roll is to be treated as forming part of the nomination paper, some of the items e.g. residence, name of the candidate, name of the constituency in the nomination paper would be superfluous. The Legislature or any other rule-making authority cannot be charged with superfluity. There is no doubt, and Shri Sudhalkar had to concede it ultimately, that there is a defect in the nomination but according to Shri Sudhalkar's argument the defect is merely formal and not substantial.

13. As said above it has been conceded for the Petitioner that the omission to mention the age is a defect. A 'defect' according to the Shorter Oxford Dictionary Vol. I means 'the fact of falling short; lack or absence of something necessary to completeness'. The question is whether the defect in this case is technical. Now the words 'technical difficulty' are defined in the Shorter Oxford Dictionary, Vol. IV as a difficulty which arises in connection with the method of procedure. It is

difficult to see how the entire omission to mention the age can be called a technical defect. In the case of Baldwin V/s Ellis reported in (1929) 1, K. B. D., 273, it was argued that the omission to state the parish of which the person nominated was a local Government elector was a mere technicality. This argument however did not find favour with Mr. Justice Swift.

14. However, assuming in favour of the Petitioner that the omission is a technical defect, the next question that arises for consideration is whether it is a defect which is not of a substantial character. 'Substance' has been defined in Shorter Oxford English Dictionary, Vol. IV, as 'that which gives a thing its character; or that which constitutes the essence of a thing'. Bouvier defines substance 'as that which is essential and says that it is used in opposition to form'.

15. Now under Section 84 of the Constitution Act one of the requisite qualifications of a person to be chosen to fill a seat in the House of the People is that he must not be less than twenty-five years of age. The nomination form prescribed under rule 4 of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951 requires the Returning Officer to give a certificate of eligibility; the Returning Officer can give that certificate only when he finds that the candidate is not less than twenty-five years of age. Therefore the age of a candidate is of essence as opposed to form. In other words age is of substance or is substantial or essential. The Returning Officer will not be able to give the necessary certificate of eligibility unless he ascertains and knows the age from the nomination form. It follows therefore that any reference to age is a matter of substance or essence and any omission of age is a substantial omission. And, therefore, even assuming that the omission to mention the age is a defect which is technical, the Tribunal has no doubt that that defect is not a defect which is not of a substantial character. The Tribunal therefore holds that the decision of the Returning Officer that the defect was a vital one and not merely a technical one was not erroneous in law.

16. It is a well known proposition that in scrutinising a nomination paper it is not necessary to insist upon meticulous details and absolute accuracy in the filling in of the form. If the nomination paper as it is before the Returning Officer substantially complies with the requirements of description or particulars which are sufficient to indicate the identity and the eligibility of the Petitioner, then it may be deemed that the nomination paper is in order and it will not be proper to reject it. Shri Sudhalkar has drawn our attention to several cases which in effect lay down that what is required is not meticulous accuracy but a substantial compliance with the requirements of law. It will suffice to refer to two of them. In Lewis Vs. Gibbon (Vol. I, Doabia's Indian Election Cases, P. 259) the Candidate had failed to mention his father's name in the relevant column of the nomination form as required by one of the Punjab Electoral Rules 1936 and the Returning Officer had rejected the nomination paper for that omission. The Case went before the Election Commission and it held that the omission was not material and it did not invalidate the nomination paper. Mr. Sudhalkar has strongly relied upon this case and submitted that even though there was a total omission to fill the father's name in the nomination form, the Commission was of the opinion that the Candidate's nomination paper was wrongly rejected. The perusal of this case however shows that by reason of another rule it was not necessary to enter the name of the father of an elector who is a European or an Anglo-Indian, and therefore the Commission held that in the case of *Anglo-Indians* the omission to mention the father's name was not a material omission. This case does not help Mr. Sudhalkar. On the other hand it shows that if an omission is material it will be fatal. The next case on which Mr. Sudhalkar relied was the case of Waswasingh V/s. Waryam Singh and others reported at P. 263 of the 2nd Vol. of Doabia's Indian Election Cases. In that case in the nomination paper in describing the sub-division the candidate had written "Thana Batala" instead of "Thana Sadar". His nomination paper was rejected by the Returning Officer but the Commission upset his decision and held that the rejection was improper. There, the reason for the decision was that the defect was trivial. This case therefore is of no use to Shri Sudhalkar.

17. All the cases relied upon on this part of his case by Shri Sudhalkar lay down that what is required in filling in of the nomination form is not meticulous accuracy but substantial compliance with the requirements of law. The Tribunal is entirely in agreement with this view. The ratio decidendi of all these cases is that if the defect is material it is fatal, and if it is trivial the rejection is improper. And this is exactly what is enacted in Section 36(2) and (4) of the Representation of the People Act. Therefore whether the Tribunal looks at the said sub-clause 4

which it is bound to do or at the case law, the only conclusion that it can come to is that if the defect is trivial it may be ignored but if it is substantial it cannot be ignored.

18. Shri Joshi has argued that if there is a total omission of any item then there is no option left to the Returning Officer but to reject the nomination paper and for this proposition he has relied upon two cases. Queen V/s Tugwell (1867-68), 3, Q.B.D., P.704 and Baldwin and others V/s Ellis and others (1929) 1 K.B.273. In the first case the rules required that the voting papers should contain the Christian name and Surname together with place of abode and description of the candidates for whom the burgers voted. A voting paper contained the Christian name and Surname of the Candidate and his place of abode only but not the description. On these facts it was held that it was not an inaccurate description but a total omission which was not covered by Section 142 of the Municipal Corporation Act. In Baldwin and others V/s Ellis and others it was held that the omission to state in the nomination paper as required by Rule 4 of the Rural District Country Election Order (1898) the name of the Parish for which the person nominated was qualified as a local Government elector was a non-compliance with the said rule, and that the omission was not merely an inaccurate description of the person nominated within Rule 33 of the Order of 1898, but it was a non-compliance with the requirements of Rule 4 of the said Order and therefore was not cured. In both these cases, the nomination papers were rejected. These cases were cases of total omission to fill in certain details only, and it was held that the requirements of the law must be strictly complied with. In other words substantial compliance was not enough. But these cases turn on the special wording of the acts and rules mentioned therein, and it is not known whether there was any provision in those acts or rules similar to the provision contained in Section 36(4) of the Representation of the People Act. Therefore the Tribunal has not relied on those cases in coming to its conclusions.

19. The conclusions therefore that the Tribunal has reached are (1) that the omission by the Petitioner to mention his age in his nomination papers is a defect of a substantial character, and (2) that the Petitioner's nomination papers were properly rejected.

20. The result is that the Petition fails and is dismissed. The Petitioner is ordered to pay the costs of and incidental to this Petition as follows: Rs. 100 to Respondent No. 1, Rs. 30 each to Respondents Nos. 3 and 4. There will be no order for costs in favour of Respondent No. 6 as she does not apply for any. No order for costs in favour of Respondents Nos. 2 and 5 who were absent.

(Sd.) M. S. NORONHA.

(Sd.) N. M. MIABHOY.

(Sd.) A. A. ADARKAR.

Baroda,
24th July, 1952.
Seal

ELECTION PETITION No. 23 OF 1952.

CORAM

Shri M. S. Noronha, B.A., LL.B., J.P.—*Chairman.*

Members of the Election Tribunal.

Shri N. M. Miabhoy, B.A., LL.B.

Shri A. A. Adarkar, B.A., LL.B.

In the matter of the Representation of the People Act, 1951

And

In the matter of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951

And

In the matter of the Election Petition presented thereunder by Shrimati Hansa Jivraj Mehta

And

In the matter of the Maharaja Sayajirao University of Baroda Act, 1949.

Hansa Jivraj Mehta, aged 54 years, Hindu, residing at University Road, Baroda—Petitioner.

Versus

- | | |
|---|----------------|
| 1. Indubhai Bhallabhai Amin, aged 37 years, Hindu, residing at Alembic Works, Baroda. | } Respondents. |
| 2. Hari Ramchandra Gokhale, aged 36 years, Hindu, residing at Anandpura, Baroda. | |
| 3. Bhailal Jesangbhai Patel, aged 44 years, Hindu, residing at Dandia Bazar, Baroda. | |
| 4. Chandulal Khushaldas Patel, aged 28 years, Hindu, residing at Village Sejakuwa, of Padra Taluka, of Baroda District. | |
| 5. Nanubhai Vrajlal Patel, aged 48 years, Hindu, residing at Kothi Pole, Baroda. | |
| 6. Pranlal Thakorlal Munshi, aged 67 years, Hindu, residing at Pratap Gunj, Baroda. | |

Judgment.

The Petitioner in this case is Shrimati Hansaben Jivraj Mehta who was the first Vice-Chancellor of the Maharaja Sayajirao University of Baroda, hereinafter referred to as the 'University of Baroda'. She stood on the Congress ticket for election to a seat in the House of the People from the Baroda West Constituency in the Bombay State. She filed three nomination papers on or about the 21st day of November 1951 which came up for scrutiny before the Returning Officer, Shri L. R. Dalal, on the 27th day of November 1951, when the Respondent No. 2 abovenamed raised an objection to the nomination of the Petitioner. Respondent No. 2 contended that the Petitioner as Vice-Chancellor of the University of Baroda drew an honorarium and a car allowance and was also provided with free furnished quarters and was therefore disqualified for election to the House of the People under the provisions of Article 102(1) (a) of the Constitution of India. The 2nd Respondent's argument was that the Petitioner held an office of profit under the State of Bombay other than an office declared by Parliament by law not to disqualify the Petitioner. The Returning Officer after hearing the parties upheld the objection of the 2nd Respondent and rejected the nomination of the Petitioner. In the Elections that were subsequently held the 1st Respondent abovenamed was declared as the duly elected candidate for the seat in the House of the People from the Baroda West Constituency and the said declaration was published in the *Gazette of India* dated 25th January, 1952.

2. The Petitioner has presented this Petition under Section 81 of the Representation of the People Act 1951 (Act XLIII of 1951), challenging the election on the ground that the same has been materially affected by the improper rejection of her nomination and praying that it may be declared under the provisions of Section 100(1) (c) of the said Act that the election of the 1st Respondent is void and that the election to the House of the People from the Baroda West Constituency is wholly void. The Petitioner has urged in her Petition that having regard to the provisions of the Maharaja Sayajirao University of Baroda Act, 1949, hereinafter referred to as the 'University of Baroda Act', the Returning Officer should have held that the Petitioner, had an office under the University and not under the State of Bombay. She has contended, further, that the honorarium and the car allowance were paid to her and the free furnished bungalow given to her by the University and not by the State; and that the fact that the Government was making a grant to the University of Baroda had nothing to do with the question as to who made the payment and provided the house to the Petitioner.

3. When the Petition came on for hearing the Petitioner was represented by Shriyuts M. V. Desai and Y. B. Rege, advocates, instructed by Messrs. Ranchhoddas and Co., Attorneys. Shriyuts G. N. Joshi, J. M. Pavri and N. P. Desai, advocates, appeared for Respondent No. 1, Shri M. M. Patel, advocate, for Respondent No. 3, Shriyuts M. K. Jejurkar and C. A. Patel, Advocates, for Respondent No. 4. Respondents 2 and 5 remained absent, while Respondent No. 6 appeared in person. Shri Joshi put in the written statement of Respondent No. 1 and the same was marked as Exhibit No. 1. Shri M. M. Patel did not wish to file a written statement on behalf of Respondent No. 3. Similarly Respondent No. 6 did not wish to file a written statement. Shri Jejurkar put in a written statement on behalf of Respondent No. 4 which was marked as Exhibit No. 2. In Exhibit No. 2 Respondent No. 4 states that he has no interest in the conduct of this election petition. In his written statement Respondent No. 1 has contended that the Petitioner's appointment was made by the Government of Bombay on such terms and conditions as the Government thought fit; that the said appointment could

not be challenged either by the Senate or any governing body of the Baroda University; and that the Petitioner is irremovable from office by anyone except by the Government of Bombay. In the result, he argued that the Petitioner must be deemed to be holding an office of profit under the Government of Bombay and was therefore not qualified to stand for election to a seat in the House of the People.

4. The main issue, in fact, the only issue in this Petition is whether the Petitioner was at the time she presented her nomination papers 'holding an office of profit under the Government of a State'. Admittedly, the office in question had not been declared by Parliament by law not to disqualify its holder. When the question was agitated before the Returning Officer the Petitioner appears to have pressed before him the view that what she received in the shape of money was a mere honorarium and could not be described as salary or as profit. The Returning Officer held that the honorarium and allowance received by the Petitioner and the free furnished quarters given to her constituted 'profit', the broad dictionary meaning of which covers 'any advantage or gain'. In *Delane V/s Hillcoat* (9, *Barnewall and Cresswell's Reports*, P. 310) it was held that in deciding the question whether a person held an office of profit the consideration to be borne in mind is not whether the holder himself made profit out of the office but whether the office was one which enabled him to make a profit. However, it is not necessary for the Tribunal to pursue this point further as the learned counsel for the Petitioner conceded at the hearing that the office held by the Petitioner was *per se* an office of profit.

5. The residuary issue now left for decision is whether the Petitioner's office which is admittedly one of profit is 'held under the Government of a State'. In deciding this question various tests can be applied: (1) Whether the State Government has the power of appointing or removing from office the Petitioner, (2) Whether it has power to issue directions to the Petitioner and compel obedience to such directions and (3) Whether the profit in question is derived by the Petitioner from the Government of the State. Then the further question is whether these tests should be satisfied cumulatively i.e., all of them, or whether it is enough if only one or more of these tests is satisfied. The argument of the learned counsel for the Petitioner was that all these tests should be satisfied cumulatively and then only could it be said that the Petitioner was holding an office under the Government of the State. It was, however, urged by the learned counsel for Respondent No. 1 that the satisfaction of any of these tests, particularly the test of appointment to and/or removal from the office by the Government of a State, should be enough to come to the conclusion that the office is one 'held under the Government of the State'. The fundamental principle underlying the provision in Article 102(1) (a) is well known. The idea behind the provision is that there should be no conflict between the duties of a member of a legislature as such and his interests. In other words the object of Article 102(1) (a) is to disqualify a person from membership of the legislature if he is indebted to Government for an office which carries profit and thus compromises his independence.

6. To appreciate the contentions of the two sides better it would be convenient at this stage to set out certain events that happened prior to the Petitioner's nomination and also to set out the main provisions of the University of Baroda Act on the construction of which the decision of the main issue in this Petition depends. It appears that prior to the enactment of the University of Baroda Act, 1949, which came into force from the date of its publication on 30th April, 1949, the merger of the State of Baroda with the State of Bombay had been decided on and an Instrument of Accession had already been signed by the then Maharaja of Baroda. In view of the merger which had then been decided on, in Section (2) (e) of the University of Baroda Act 'Government' was defined as 'the Government of Baroda or any other authority that takes its place'. The merger it appears was actually effected on the 1st of May, 1949. Thereafter the Bombay Government promulgated the Baroda State (Application of Laws) Order which came into force on 30th July, 1949. Clause 10 of the said Order amended the definition of 'Government' in Section 2(e) of the University of Baroda Act to mean 'the Government of Bombay'. The definition of 'Government' in Section 2(e) of the University of Baroda Act as amended now stands thus: 'Government means the Government of Bombay'.

7. Thereafter the Government of Bombay promulgated Ordinance No. VI of 1949 which came into force from 31st December, 1949. This subsequently became Act IV of 1950. Clause 6 of the said Ordinance has provided for the continuation in force of certain enactments of the State of Baroda including the University of Baroda Act as if they had been enacted by the Legislature of Bombay State.

Section 10 of the University of Baroda Act provides that subject to the confirmation of the Government the Vice-Chancellor shall be elected by the Senate from a panel of three persons recommended by the Syndicate. This provision, however, does not apply to the appointment of the first Vice-Chancellor which is governed by Section 63 of the University of Baroda Act. Section 63 of the University of Baroda Act runs as follows: 'Notwithstanding anything contained in Section 10, the first Vice-Chancellor shall be an honorary officer who shall be appointed by the Government as soon as practicable after the passing of this Act for a period not exceeding 3 years and on such terms and conditions as the Government thinks fit'. The Government of Baroda state appear to have given effect to the provisions of this section with promptitude; for the Baroda State Government by their order No. (R)285/72, dated 30th April 1949 appointed the Petitioner as the first Vice-Chancellor of the University with an honorarium of Rs. 500 P.M., a Car Allowance of Rs. 150 P.M. and a free furnished bungalow. At the time of the nomination for election to the House of the People the Petitioner was admittedly holding this office.

8. Under Section 8 of the University of Baroda Act the Vice-Chancellor is an officer of the University. It is not contended by either party before this Tribunal that the Vice-Chancellor by reason of the appointment became an officer of the Government of Baroda State or that she is now an officer of the Government of the State of Bombay. Section 51 of the University of Baroda Act requires the University to establish a fund to be called the University Fund and provides that any contribution or grant by the Government shall form part of the University Fund. It appears that the Government of Bombay has been sanctioning annually a block grant to the University of Baroda. The last such grant was one of Rs. 12½ lakhs and was sanctioned by Government's Resolution No. USG/1151, dated 4th October 1951. This grant admittedly forms part of the University Fund which is utilised by the University towards expenditure *inter alia* on its administrative machinery, such as pay, allowances, honoraria to the staff etc. It was therefore contended before the Returning Officer that the Vice-Chancellor's honorarium, allowance, etc. or at least some part thereof were borne by the Exchequer of the Government of Bombay. The Returning Officer upheld this contention, but this Tribunal is not in agreement with the Returning Officer on this point. The honorarium and allowance received by the Petitioner come directly from the University Fund and the fact of Government's contribution to that Fund **does not in any way change the source of the Petitioner's honorarium and allowance. It has now been conceded by the learned counsel for the 1st Respondent that once the Government's grant reaches the University it loses its character and becomes part and parcel of the University Fund and ceases to be Government money.** It is clear therefore that the Vice-Chancellor does not draw her 'profit' from the Government of Bombay.

9. This brings us to the next question which is a very important one and that is who has appointed the Petitioner to the office of Vice-Chancellor and/or who can remove her from that office. As has already been indicated in Para. No. 7 above the Petitioner was appointed Vice-Chancellor by the Government of the State of Baroda acting under the provisions of Section 63 of the University of Baroda Act. The University of Baroda had nothing to do with this appointment. By reason of the amendment of Section 2(e) of the latter Act to which reference has been made hereinbefore, the Government of Bombay has stepped into the shoes of the Government of Baroda, and has now got the power of removing the Petitioner from the office of Vice-Chancellor. The University of Baroda Act contains no specific provision on this point. But it is a recognised principle of law that a party having the power to make an appointment has also in the absence of a provision to the contrary the power to revoke it. This principle is specifically embodied in Clause 16 of the Bombay General Clauses Act. It may therefore be presumed that if the occasion arose to remove the Petitioner from her office the Bombay Government had the power to do it. It was argued by the learned counsel for Respondent No. 1 that in these circumstances only one conclusion was possible, *viz.*, that the Petitioner held her office under the Government of a State, in the present case, the Government of Bombay, and therefore the Petitioner was disqualified under Article 102(1)(a) of the Constitution of India.

10. It was urged on behalf of the Petitioner that the Petitioner was not appointed by the Government of Bombay and therefore it could not be stated that the Petitioner was holding an office under the State of Bombay. It is true that the Petitioner was appointed by the Government of Baroda, and that though the Government of Baroda is the predecessor of the Government of Bombay, it cannot be predicated that the appointment of the Petitioner was by the Government of Bombay. However, this Tribunal is of the opinion that this fact is not conclusive. In order that an officer may be an officer of a particular State it is not necessary that that officer in all cases should be appointed by that State. In the opinion of this Tribunal, if an officer is continued by a State and is removable by that State then the officer can be said to be under that particular Government. There cannot

be any doubt that after Baroda got merged in the State of Bombay the latter had the power of terminating the appointment of the Petitioner, particularly as her appointment was not for any particular period of time. In the opinion of this Tribunal the Government of Baroda being the appointing authority has the power of terminating the services of the Petitioner on the principle mentioned by the Tribunal in paragraph 9 of this judgment. The Tribunal has no doubt that this power devolved on the State of Bombay by virtue of the fact that it was the successor of the Government of Baroda. Therefore, the Tribunal has come to the conclusion that though the Petitioner was not originally appointed by the State of Bombay, her appointment was certainly continued by that State. It also follows from the aforesaid reasoning that the State of Bombay also has and always had the power of removing the Petitioner from her present office.

11. It was argued by the learned counsel for the Petitioner, however, that the power to appoint coupled with the power to revoke the appointment are not the deciding factors in a case like this. He contended that the *sine qua non* is that the emoluments of the Petitioner should come from the revenues of the Government of a State. If this was not the case, according to him, the Petitioner could not be deemed to be holding an office of profit under the State even if her appointment could be made and revoked by the Government of the State. The learned counsel for the Petitioner relied on the decision in *S. N. Halder V/s S. N. Malik* (Hammond's Election Cases, P.257). It is true that in that case the test as to what was the source from which a person drew his salary was discussed and applied. In that case it was held that the Chairman of the Calcutta Corporation was drawing his salary from the Municipal funds and therefore did not become an 'official' within the meaning of a Notification published under the Government of India Act, 1915. In that case, however, that was not the only test which was applied by the Tribunal for determining whether the Chairman was an official or not. The Tribunal further stated that there was a second test which also required to be applied, and that second test was as to who had the power of dismissing the person concerned. Therefore, it is not correct to say that the aforesaid case decided that the source from which a person drew his salary was the only test for determining whether that person was an 'official' within the meaning of the Government of India Act, 1915. On the contrary, the aforesaid decision specifically decided that in considering the aforesaid question the test of power of removal from office was also one of the tests which should be determinative of the question. If a Government can appoint a person to an office or can continue a person in that office or can at their discretion revoke that appointment it follows as an irresistible inference that the person would be under an obligation to that Government, irrespective of the fact that his salary is drawn from some source other than Government. In fact such a person would be indebted to the Government for an office of profit, and this would certainly affect his independence *vis-a-vis* the Government in the legislature. This is exactly what is sought to be prevented by Article 102(1)(a). It appears to the Tribunal that the power of Government to appoint a person to an office of profit or to continue him in that office or to revoke the appointment at their discretion is a very important factor and the person in such a case can surely be said to hold an office under that Government. For instance, in *Khwaja Hakim Jan V/s Moulvi Shaikh Mahomed Husain* (Hammond's Election Cases, P.311) it was held that the Petitioner, who was the Manager of an estate under the management of the Court of Wards and who was appointed by the Court and could be removed by it, was an 'official' within the meaning of Section 80B of the Government of India Act, 1919, even though his salary was paid from the revenues of the estate.

12. The aforesaid findings of the Tribunal refer only to the case of the present Petitioner who is the first Vice-Chancellor and who has been appointed by Government under Section 63 of the University of Baroda Act. In this Petition the Tribunal is not concerned with the provisions of the Baroda University Act which deal with the future Vice-Chancellor when he or she is appointed under the provisions of Section 10 of the University of Baroda Act.

13. It has been argued by the learned counsel for the Petitioner that the expression 'holds an office of profit under the Government of a State' must be construed as one single and composite phrase. His argument in other words is that there must be an office, that office must carry a profit and that profit must be derived from the Government. The Tribunal is not in agreement with this point of view as is clear from the conclusions arrived at in the preceding paragraphs. The learned counsel for the Petitioner has argued that at the very highest it may be said that the Petitioner is the holder of an office of profit under the University of Baroda which is an authority subject to the control of the Government. He has drawn the attention of the Tribunal to the difference in the provisions of

Article 102(1)(a) on one side and those of Articles 58(2) and 66(4) of the Constitution of India on the other. Article 58(2) relates to the eligibility of a person for election as President and Article 66(4) to his eligibility for election as Vice-President. They provide that a person shall not be eligible for election as President or Vice-President if he holds any office of profit under the Government of India or the Government of any State or under any local or other authority subject to the control of any of the said Governments. The learned counsel's argument is that the holding of an office of profit under any local or other authority subject to the control of the Government of India or of the Government of any State is only a disqualification for eligibility for election as President or Vice-President. It is, according to him, not a disqualification for election as a member of the House of the People. In the case of the Petitioner, he argues, she holds an office of profit under the University which may be said to be subject to the control of the Government of Bombay, but this does not in any way disqualify her for election to the House of the People. This argument does not appeal to the Tribunal. The Tribunal has already held supra that the Petitioner having been continued as Vice-Chancellor by the Government of Bombay and being removable by that Government must be deemed to be under the Government of Bombay and therefore ineligible.

14. The Returning Officer has in his order relied upon the provisions contained in Section 7 of the University of Baroda Act and held that the State of Bombay had the power to issue directions to the petitioner and also to compel obedience to such directions. In the opinion of this Tribunal it is not necessary to decide this point in view of the conclusions reached above. However, it may be mentioned that if it were necessary to decide this point the Tribunal would have found it difficult to agree with the opinion expressed by the Returning Officer. The power of issuing directions and compelling obedience is given to the Chancellor in sub-section (4) of Section 7 of the Act aforesaid. It is noteworthy that that particular sub-section is not mentioned in sub-section (5) of Section 7 as one of the sub-sections the powers under which can be exercised by the State of Bombay.

15. In the circumstances, for the reasons set out hereinabove, the Tribunal has come to the conclusion that the Petitioner at the time of presenting her nomination held an office from which she derived profit; that she was continued in that office by the Government of Bombay and could have been removed from the office at the discretion of that Government. In the opinion of the Tribunal, therefore, the Petitioner at the material time held an office of profit under the Government of a State within the meaning of Article 102(1)(a) and was therefore disqualified from election to the House of the People, and that the rejection of her nomination by the Returning Officer was just, proper and legal. In the circumstances this petition is dismissed and the Petitioner is ordered to pay costs of and incidental to this Petition as follows:—

Rs. 100 to Respondent No. 1.

Rs. 30 to Respondent No. 3, and

Rs. 30 to Respondent No. 4.

No costs are awarded to Respondent No. 6 as he does not ask for any.

BARODA;

22nd July, 1952.

(Sd.) M. S. NORONHA.

(Sd.) N. M. MIABHOY.

(Sd.) A. A. ADARKAR.

Seal

P. S. SUBRAMANIAN,
For Chief Election Commission.

